Supreme Court, U.S.
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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1996

IN RE: PETER ADRIAN ACUNA

Petitioner

PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

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98 pp

QUESTIONS PRESENTED

1. Is the summary disbarment of an attorney with no grounds stated a denial of due process of law?

2. Is the absence of decision-making concerning constitutional claims by a court of law prior to disbarment a denial of due process of law?

3. Is the abdication by the California Supreme Court of its judicial duties to license a state's attorneys to employees of a a private party a denial of due process of law?

4. Is the California attorney licensing system unconstitutional for lack of a fair and impartial adjudicator?

5. Is the publication in national newspapers of advisory recommendations to a State Supreme Court by a private party asserting it is the State Supreme Court a denial of due process and of equal protection of the law?

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6. **Is the California State Bar's Court system unconstitutional as a denial of equal protection rights of the registered voters and as a private, partisan, and financially interested entity?**

LIST OF PARTIES

The parties are as follows:

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In The

SUPREME COURT OF THE UNITED STATES

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IN RE: PETER ADRIAN ACUNA

Petitioner

PETITION FOR WRIT OF CERTIORARI TO

THE SUPREME COURT OF CALIFORNIA

Petitioner Attorney respectfully prays that a writ of certiorari issue to review the summary disbarment order of the Supreme Court of California, docket no. S055788, filed on February 26, 1997. Appendix A.

Said decision states in its entirety, "OPINION: Petition for writ of review DENIED. It is hereby ordered that Peter Adrian Acuna be disbarred from the practice of law and that his name be stricken from the roll of attorneys. He is also ordered to comply with rule 955, California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the date this order is effective.

Costs are awarded to the State Bar. (See Business & Professions Code, @ 6126, subd. (c).)"

I.

ORDERS BELOW

The summary order of the California Supreme Court is reproduced at the appendix at A.

II.

JURISDICTION

The jurisdiction of this Court is involved under 28 U.S.C.A. s. 1257(3). This Petition for writ of certiorari is timely filed within ninety days of the order of the California Supreme Court on February 27, 1997. Appendix A.

III.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution

Amendment XIV: "No State shall .... deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

California Constitution

Article 6, section 1: "The judicial power of the State is vested in the California Supreme Court, the Courts of Appeal, the Superior Courts, and the Municipal Courts. All courts are courts of record."

Article 6, section 9: "The State Bar of California is a public corporation...."

Article 6, section 12: (a) "The California Supreme Court may... transfer a cause from itself to a court of appeal...The court to which the cause is transferred has jurisdiction."

Article 6, section 14: "The legislature shall provide for the prompt publication of such opinions of the Supreme Court and Courts of Appeal as the Supreme Court deems appropriate, and those opinions shall be available for publication by any person. Decisions of the Supreme Court and courts of appeal that determine causes shall be in writing with reasons stated."

Article 6, section 16: "(a) Judges of the Supreme Court shall be elected at large and judges of courts of appeal shall be elected in their districts at general elections at the same time and places as

the Governor.....(b) Judges of other courts shall be elected in their counties or districts at general elections."

The state statutes at issue are California Business and Professions Code sections 6079.1, 6079.5, 6086.5, 6086.10, 6086.13, and 6086.65(a). They are set forth at Appendix C.

IV.

STATEMENT OF THE CASE

The State Bar of California is a privately financed entity and a prosecuting party. This Court held in **Keller v. State Bar of California** 496 U.S. 1, 110 L. Ed. 2d. 1, 110 S. Ct. 2228 (1990), overruling 47 Cal.3d. 1152, 255 Cal. Rptr. 542 (1989), at 13 that, "The State Bar of California was created, not to participate in the general government of the State, but to provide specialized professional advice to those with the ultimate responsibility of governing the legal profession. Its members and officers are such not because they are citizens or voters, but because they are lawyers."

The decision at issue states that the State Bar of California having elevated itself into a private Court now replaces

the California Supreme Court in licensing attorneys. Appendix B.[1]

The constitutionality of the legislation creating the State Bar of California as a privately financed entity was judicially limited to the State Bar of California possessing no judicial power, having no court or judges, being an advisory entity consisting of its compelled attorneys members serving without compensation to recommend discipline to the California Supreme Court. As the constitutional court licensing attorneys, the California Supreme Court was required to undertake plenary review of such private recommendations, decide constitutional issues, and enter its decision with reasons stated.[2]

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The State Bar's nationally published decision states that, "See s. 6086.5 [The State Bar Court acts in the Supreme Court's "place and stead in the determination of disciplinary and other specified proceedings.].) Thus, contrary to respondent's suggestions, the State Bar Court possesses the jurisdiction to adjudicate attorney disciplinary proceedings as an arm of the Supreme Court." Appendix B.

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The Petition for Review set forth at page 4, "The constitutionality of the statutes creating the State Bar of California was premised on it having no judicial power, being a participatory bar association, with members of the profession serving without compensation prosecuting attorneys and other members of the profession serving without compensation and sitting in

In 1986, by statute, the State Bar of California replaced the participation of the compelled attorney members serving without compensation to act as advisors to the California Supreme Court concerning recommended facts and discipline. It replaced them with its own employees who are the co-employees of the prosecutors it also employs. It created itself into a claimed State Bar Court with its judges selected and employed by it. Section 6086.5. By statute, in 1986, it was entitled to receive its reasonable expenses of investigation, hearing, and review from accused attorneys found culpable of public discipline. Section 6086.10. This, it has construed, to mean recoupment of the salaries and benefits of its employee prosecutors, investigators, and judges to its Court from adjudged guilty attorneys. Appendix C. As evidenced by the assessment of $7, 951.00 for itself in this

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advisory three-man panels to recommend findings of fact to this Court, with this Court having the duty of independent plenary review and making the legal conclusions, and entering the decision as to the discipline of an attorney. **Brotsky v. State Bar** 386 P. 2d. 697 (1962), **Chronicle Publishing Co. v. Superior Court** 7 Cal.Rptr.109,354 P.2d. 637, 54 C.2d.548 (1939), **Herron v. State Bar** 212 Cal. 196, 298 P. 474 (1951), **Hogan v. State Bar** 36 Cal. 2d. 809, 228 P. 2d. 554 (1944), **In re: Cate** 270 P. 969 and 273 P. 617 (1928)."

case. it assessed $2,640.00 for its investigator's salaries and benefits, $3,460.00 for its prosecutor's salaries and benefits, and $1,851.00 for its judges' salaries and benefits in addition to taxable costs of $1,174.00. Appendix D.

In 1989, by statute, the California Supreme Court appointed nine employees to the State Bar of California. Sections 6079.5, 6086.5. Its appointees serve as judges to the State Bar's claimed Court. They replace the active members of the community of attorneys serving without compensation to advise the California Supreme Court concerning discipline. They are employees of the prosecuting party. They are paid salaries by the prosecuting party, the State Bar of California, equivalent to those of constitutional judges elected to the constitutional courts. Their salaries, benefits, staffs, housing, and training are provided by the prosecuting party from its private funds. Sections 6079.5, 6086.5.

Since 1989 the California Supreme Court declined to reappoint five of its appointees, including the presiding judge who sought independence for the claimed Court from the dictates of

the prosecuting party which orders the Court and its judges what to do.[3] It appointed an additional five employees to serve in their place and stead. One of those not reappointed was the petitioner's hearing judge following the filing of the petitioner's federal law suit seeking to obtain an injunction barring the hearing which subsequently resulted in her disbarment recommendation issuing against the petitioner. Judicial Notice requested of Acuna v. Justices of the Supreme Court of the State of California, Ninth Circuit Court of Appeals, Case No 95-55499.

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3 As set forth in the Motion for Recusal of Members of the California Supreme Court filed by the petitioner in this matter with the California Supreme Court which was summarily denied, at page 4, "The former appointee of this Court, Lise A. Perlman, the denominated presiding judge of the State Bar's 'Court' has stated in **The California Lawyer**, the official monthly publication of the State Bar of California, in its April, 1996 issue, in her article, 'Declare Independence,' at page 28 that,'Many disciplined attorneys also view the [State Bar's] court with suspicion because of its connection to the State Bar [of California] The bar [State Bar of California] has defended at considerable expense, numerous federal suits challenging the court's constitutionality, and more suits appear likely. The State Bar [of California] defended these challenges by arguing that there was no inappropriate commingling of the executive and adjudicative functions. Then, in 1995, the board [of the State Bar of California] rewrote its long-standing rules to abolish the presiding judge's general supervisory role over all assigned staff, relegating the judges to consultation and 'meaningful input' in the administration of the court.' This Court's appointees are clearly not independent adjudicators. They are employees of the prosecuting party who must follow its orders in adjudicating the guilt or innocence of an accused attorney."

The California Supreme Court appoints and has appointed ten employees to the State Bar of California to be its judges. It also removes or reappoints these judges. The State Bar of California is the prosecuting party in disciplinary proceedings. The appointed judges are employed, housed, trained, paid and provided their salaries, facilities, offices, retirement, and benefits by the State Bar of California and from its private funds. Those funds include the assessments they make upon finding attorneys guilty of professional misconduct. The judges and prosecutors are co-employees who are housed, trained, paid and provided their benefits from the same privately financed employer which is the exclusive financial beneficiary of findings of guilt of accused attorneys.

The California State Constitution bars court creation by government. It reserves court creation exclusively to the registered voters. It requires all judges to courts be appointed by the Governor and subject to public election. The Petitioner is a registered voter and an attorney at law for over eighteen years. He was first admitted to practice law in 1979.

Compelled attorney members of the State Bar are excluded from participation in the State Bar's Court. They are the class of the accuseds.

Since 1991, the California Supreme Court has refused to hear any petition of any accused attorney challenging the recommendation of discipline of its appointees to the State Bar of California All of its disbarment and suspension orders issue summarily per curiam with no grounds or law stated. Appendix A. Its own decisions are not published. As presented herein, it has, contrary to law, authorized its appointees to the State Bar of California to publish their own recommendation as a decision nation-wide as a claimed court of law in place and in lieu of decisions by the California Supreme Court and to bar access to a constitutional court of law to hear and entertain any constitutional claims prior to a summary disbarment.

The judicial function of licensing of the state's attorneys has been abdicated to private people within a prosecuting party, including a lay person, who disbar and suspend to aggrandize their coffers for their employer by imposing financial rewards it

grants itself by finding guilt of all accuseds. Recalcitrants, who challenge the constitutionality of this system such as this petitioner who filed suit before trial in federal court, are summarily disbarred and ordered to pay $7,951.00 for their salaries and benefits.

"Section[s] or "s."" refers to sections of the California Business and Professions Code.

V.

REASONS FOR GRANTING THE WRIT

A. The Absence of Decision-making by a State Court of Constitutional Issues prior to Disbarment denies Due Process of law

The summary order of disbarment issued by the California Supreme Court by denying the attorney's petition for review precludes constitutional issues being heard and decided by a Court of law prior to the taking of a license to practice law. Appendix A.

The Petition for Review filed by the Petitioner with the California Supreme Court requested review of a recommendation of disbarment issued by two lawyers and one lay person

employed by the State Bar of California. Said petition requested review on the basis that,"This Petition is filed as the legal questions concern a published claim that this Court has been replaced in its judicial duties concerning the admission and discipline of attorneys by employees to a party which is a privately financed entity, the lack of a fair and impartial adjudicator within this private system, the lack of reasonable access to the courts inherent in a controlled private licensing system with no independent judicial court access, takings with no judicial action and with wide-spread defamatory press prior to a determination of a final taking which prejudice this Court and its ability to perform its mandated independent review, the lack of any review, the problem of no evidence, court rules, court processes within this private system, the vagueness of the ethics rules and standards, the determination of criminal charges by private persons who have no jurisdiction to determine criminal charges, the substantial variance between charges and findings, the unconstitutionality of the entity that is hearing disciplinary cases and has publicly proclaimed it has replaced this Court,

reliance on non-citable cases, and the subjective and ad hoc determinations where discipline for the same acts range from no discipline to disbarment based on a retaliatory motive of quashing constitutional claims about this private attorney licensing system. [4] It is important to settle these issues as important questions of law as the issue is whether this attorney licensing system must be declared unconstitutional for lack of any independent adjudicator, rules, hearings, processes, or standards. California Rules of Court, Rules 952(e)." Pet. for Review, at page 3.

By summarily disbarring the attorney and denying review of these constitutional claims, the California Supreme Court barred the presentation of constitutional claims prior to a taking of the attorney's license to practice law.

Does this procedure wherein the California Supreme Court has denied review to all accuseds attorneys and summarily

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[4] The dip in the Client Trust Account was $5,062.63, not in excess of $9,000, was for a total of fifty six days, and all clients were paid immediately and before any complaint was filed. A dip in a trust account of $5,000 has resulted in as slight discipline as a reproval, but he raised no constitutional issues. **Dudugjian v. State Bar** (1989) 278 Cal. Rptr. 90.

disbarred or suspended them since 1991 with no cause stated violate due process of law and the mandates that an accused be provided "an opportunity to be heard at a meaningful time and in a meaningful manner," **Mathews v. Eldridge** 424 U.S. 319, 333, 85 S. Ct. 893, 902, 47 L. Ed. 2d. 18 (1976) (quoting **Armstrong v. Manzo** 380 U.S. 545, 552, 85 S. Ct. 1187, 1191, 14 L. Ed. 2d. 62 (1965)?

B. The Partisan Role of the California Supreme Court for the Prosecuting Party by it Appointing Employees to it and Awarding Money to their Appointees' Employer by Denying Hearing to Each Accused Poses Due Process Problems

The petition for review to the California Supreme Court was accompanied by a separate motion for recusal of the members of the California Supreme Court. Petitioner requested that his petition be transferred as provided under state law to a State Court of Appeals. The motion addressed the bias within the California Supreme Court by reason of its appointment of employees to the prosecuting party. This was summarily denied.

Based on this Court's statement that the test is whether

the situation offers a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear, and true between the State and the accused, **Aetna Life Insurance Company v. La Voie** 475 U.S. 813, 89 L. Ed. 823, 106 S. Ct. 1580 (1988), is not a situation where a State Supreme Court appoints employees to a prosecuting party to be its "judges," whose recommendations it then reviews, when the party employing its appointees is privately financed, and where by denying all petitions of all accuseds, it orders monies paid as "costs" to reimburse the party for the salaries and benefits of not only its appointees to a party, but for their co-employees as well, and orders monies for its appointees' employer's private fund for its appointees to give out to the Public, such a situation of temptation to not hold the balance nice, clear, and true, that a finding of bias within the California State Supreme Court Justices is required under the due process clause? With no rule of necessity in operation, since the California Constitution provides for transfer of causes from the California Supreme Court to a

State Court of Appeals, does not such bias mandate reversal and remand of the decision for appointment of a state court of appeals panel to hear and determine this cause?[5]

C. Administrative Adjudicators Selected, Hired, and Employed by a Party is Bias Which Denies Due Process of Law

Based on **Gibson v. Berryhill** 411 U.S. 564, 578-79, 36 L. Ed. 2d 488, 93 S. Ct. 1689 (1972), and pursuant to this Court's holding in **Ward v. Village of Monroeville** 409 U.S. 57, 93 S.Ct. 80, 34 L.Ed.2d.267 (1972), even if there were neutral review by the State Supreme Court, the fact that the adjudicatory proceedings in the lower levels lack a fair and impartial adjudicator denies to a party fundamental due process of law. A party has a constitutional right to a fair and impartial adjudicator in the first instance, *de novo* review being irrelevant.

Is not the employment, housing, training, providing of all staff, expenses, facilities, pay, expenses, and benefits for a judge

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5 There is no Rule of Necessity. The California Constitution provides any case may be transferred by the California Supreme Court to a State Court of Appeals. Article 6, section 12, Ca. Constitution.

by a privately financed party appearing before the judge such bias that it offends due process of law?

D. Administrative Adjudicators Selected, Hired, and Employed by a Party which is The Exclusive Financial Beneficiary of Findings Against Accuseds is Bias which denies Due Process of Law

Three layers of awards are imposed on adjudged guilty attorneys: the salaries and benefits of the judge and his co-employee prosecutor and investigators, sanctions to fund the State Bar Client Security Fund, and forced enrollment in sections, examinations, schools, classes owned and run by the State Bar. Section 6086.10. In this case, the State Bar imposed $7,951.00 for itself with $2,640.00 as salaries for its investigators, $3,460.00 as salaries for its prosecutors, and $1,851.00 as salaries for its employee judges. The remainder of $1174.00 is taxable costs. Appendix D.

Proceedings conducted by members of a Board of a State Bar Association wherein they desired to recoup the Association's investigative costs by finding guilt of accuseds and imposing those costs upon the adjudged guilty attorneys were voided for

lack of due process of law in **Matter of Ross** 656 P. 2d. 832, 838, 99 Nev.1 (Nev. 1983). The California system not only recovers investigative costs of a party, but also the salaries and benefits of its prosecutors and judges and provides it with additional funds to run and operate the party's court. Is not this financial motivation to find guilt to obtain funds for itself, or in the case of the California Supreme Court, for its appointees to a party to be paid, such a significant factor inducing guilt and disbarment punishment for those who challenge this system, that findings and conclusions of culpability are so tainted with impermissible financial interest, that this denies to an attorney fundamental due process of law?

E. The Abdication of Decision-Making to Private Persons is the Unlawful Delegation of Judicial Power to Private Persons

The State Bar's decision which was published by it as a decision of a court of law in the national newspapers asserts that the legislature has authorized it to replace the California Supreme Court in the judicial function of licensing attorneys. Refer Appendix B, footnote 1

However, as stated in **Hirsh v. Justices of the California Supreme Court** 67 F.3d 708 (Ninth Cir. 1995), at 713, "The California Constitution precludes the Bar Court from considering federal constitutional claims. See Calif. Const. art. III, @ 3.5."

An unlawful delegation of judicial power occurs when a person other than the judicial officer entrusted with the judgment makes the judicial decision. See **United States v. Raddatz** 447 U.S. 667, 100 S. Ct. 2406, 65 L. Ed.2d 424 (1980), **Sunshine Anthracite Coal Co. v. Adkins** 310 U.S. 381, 60 S. Ct. 907, 84 L. Ed. (1940). In **Burlington Northern v. Department of Revenue** 934 F.2d. 1064 (Ninth Cir. 1991), at 1073, when a judge "'delegated the judicial decision making function as to the entire case...." to a non article III judge, this was held to be the unlawful delegation of judicial power to a non-judge.

As in **United States v. Raddatz**, 447 U.S. 667, 65 L.Ed. 2d 424, 100 S. Ct. 2406 (1980), judges may not abdicate their judicial duties and powers to non-judicial persons without violating basic due process of law. The non-judicial and non-governmental status of the State Bar of California and its

employees was described by this Court in **Keller, supra.** When the State Bar's decision, which was summarily denied review, and published as a court decision states that, "It is unnecessary to discuss every constitutional and procedural claim made in the hundreds of pages of respondent's review briefs and attached exhibits," the totality of the judicial function of the California Supreme Court has been delivered to two private lawyers and a lay person employed by the privately financed prosecuting party. Appendix B.

Is not the delegation to employees of a privately financed party the writing of decisions about constitutional claims it is barred from deciding and refusing to permit the other constitutional claims to be heard and decided with the private party's decision the only one published with no review to a court of law allowed and no grounds stated the unlawful delegation of judicial power to a private party in derogation of the due process clause?

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F. Is not the Publication of Decisions by State Bar Employees claiming to be a Court when Decisions of the California Supreme Court and Courts of Appeals are the Only Ones Allowed a Denial of Equal Protection of the Law?

The State Bar, in order to make its recommendation the final judicial decision disbarring attorneys, publishes in the nation-wide press its recommendations as a court decision within a few days of its issuance. It does so in order to economically, psychologically, and legally prevent the attorney challenging its recommendation and obtaining court redress. Thus, the recommendation herein was published as a court decision by the State Bar before the attorney could file a petition for review to the California Supreme Court. Appendix B. This operates as the taking of the property of the license of an attorney with no due process of law.

Petitioner filed a "Motion to Bar Publication of State Bar Decisions" with his Petition for Review and his Motion for

Recusal of members of the California Supreme Court.[6] The grounds of said motion assert that "Pursuant to **Article 6, section 14 of the California Constitution,** 'The legislature shall provide for the prompt publication of such opinions of the Supreme Court and Courts of Appeal as the Supreme Court deems appropriate, and those opinions shall be available for publication by any person. Decisions of the Supreme Court and courts of appeal

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The motion filed states the following: "Now comes the Petitioner, Peter Acuna, and respectfully moves for this Court, or a Court of Appeals to which the matter may be assigned pursuant to the Petitioner's Motion for Recusal, to issue an order barring the State Bar of California, its State Bar Court, and its agents, servants, and employees from issuing asserted decisions and/or publishing the same or permitting them to be published and issuing a public order voiding and vacating Exhibit A to the companion Petition. Said published decision which was circulated throughout the State of California by way of the State Bar of California's press department which issues it as an opinion of a court of law and of record and which was published in the **Los Angeles Daily Journal** newspapers as a Court Opinion throughout the State asserts that, '(See s. 6086.5 [The State Bar Court acts in the Supreme Court's 'place and stead in the determination of disciplinary' and other specified proceedings.') Exhibit A, page 5. Petitioner requests this Court issue a ruling on this motion prior to determining the merits of the Petition, so as to provide the Petitioner with a minimum thereafter of two weeks to request a timely opportunity to present to the federal court whether the *modus operandi* adopted by this Court and its appointees to the State Bar and their employer concerning publications of the latter's opinions as decisions when the State Bar and its Court are constitutionally precluded from issuing decisions and publishing them violates the mandates of the fourteenth amendment due process and equal protections clauses of the United States Constitution."

that determine causes shall be in writing with reasons stated." Pursuant to **California Rules of Court, Rule 977** which states '[Unpublished opinions] An opinion that is not ordered published [by the California Supreme Court] shall not be cited or relied on by a court or a party in any other action or proceeding... (with exceptions not applicable)'. The case mentioned of Peter Adrian Acuna is not a case which may be cited or relied on by a court or a party in any proceeding. It may not be published. It would deny to the Petitioner the equal protection of State Law and the due process of law for this Court to decline to order its appointees and their employer to void and vacate the publication of its employees' *Peter Adrian Acuna* recommendation and to refuse to enforce the Constitutional prohibitions prohibiting all but the California Supreme Courts and Courts of Appeals to publish decisions, by reason of systemic preference and discrimination for its appointees and their private party employer, the State Bar of California. As held in **Connolly v. Union Sewer Pipe Co**.184 U.S. 540, 46 L.Ed 679, 22 S.Ct. 431, no person or class of persons shall be denied the same protection of the laws

which is enjoyed by other persons or other classes in like circumstances in their lives, liberty, and property, and in pursuit of happiness. Said publications, when the State Bar and its Court are advisory only, offends the precepts of law prohibiting pre-adjudication publications which prejudge the merits, in addition to being a direct, willful, intentional, and flagrant violation of the Constitutions of the State and of the United States. **Sheppard v. Maxwell**, 384 U.S. 333, 86 S.Ct. 1507. In addition, it denies to the Petitioner his due process and equal protection rights under the fourteenth amendment to a 'meaningful opportunity to be heard in a meaningful manner' as required under **Armstrong v. Manzo** 380 U.S. 545, 552, 85 S. Ct. 1187, 1191, 14 L. Ed. 2d. 62 (1965)"

Is not the publication of decisions of a State Bar which contain recommendations and claims it is the court replacing the California Supreme Court with the California Supreme Court refusing to review and issue any decisions of its own and refusing to enforce the prohibition on such publications a denial of the equal protection of state law?

G. Is not the State Bar's Court Unconstitutional As a denial of the Equal Protection of the Law?

One of the constitutional issues that was barred from being heard or decided is dismissal of the proceedings by reason of the fact that they were entertained by an unconstitutional court. As set forth in the Petition for Review, at 6,"In recommending disbarment, the recommendation is based on a bad faith retaliation against the Petitioner for raising his constitutional claims that the entity and the judges sitting in it are unconstitutional. While the recommendation acknowledges that the licensing of attorneys is required to be a judicial function performed by constitutional judges of constitutional courts, it then asserts that the state legislature has authorized it to replace the California Supreme Court in that judicial function. Refer footnote 1. Its basis for claiming that the State Bar of California and its judges are constitutional failed to address the issue the petitioner presented. That issue is that the petitioner's United States Constitutional fourteenth amendment rights to the equal protection of the law is violated by a Court claimed to be created,

owned, and run by the State Bar of California which has been ordered in the State Constitution to be a public corporation only, but which, in fact, is a privately financed prosecuting party. The second equal protection issue is that this private court has judges who are not permitted to be subject to public election as is required for all judges to state courts by the State Constitution. The third equal protection issue is that the State Constitution requires that new courts be added by constitutional amendment only by vote of the registered voters, and this Court of the State Bar was never subject to voter approval nor has it been authorized to exist in accordance with the State Constitution which contains the only courts of record permitted. Since the issue of the unconstitutionality of the State Bar Court of the State Bar of California and its judges is an issue that has been raised by the Petitioner since the inception by way of a motion to dismiss the proceedings because the entity and the persons sitting are unconstitutional, it appears the proceedings and recommendation must be voided as that of an unconstitutional court and judges."

It is presumed that "when citizens are affected in important

ways by a governmental decision,"the fourteenth amendment "does not permit ... the exclusion of otherwise qualified citizens from the franchise." **Phoenix v. Kolodziejski** 399 U.S. 204, 209 (1970). Any state statute granting the franchise to residents on a selected basis poses the "danger of denying some citizens any effective choice in the governmental affairs which substantially affect their lives." **Kramer v. Union Free School District No. 15,** 395 U.S. 621, 627 (1969). See **Avery v. Midland County** 390 U.S. 474 (1968). "But once a State has decided to use the process of popular election and `once the class of voters is chosen and their qualifications specified, we see no constitutional way by which equality of voting power may be evaded." **Gray v. Sanders** 372 U.S. 368, 381 (1963).

Since Article 6, section 1 of the California Constitution vests the judicial power of the State in certain specified courts and contains no clause permitting the legislature to add any new ones, Article 6, section 16 requires that all judges to courts must be selected by the Governor of the State and subject to public election, and Article 6, section 9 mandates that the State Bar of

California is a public corporation, are not the statutes permitting the privately financed State Bar corporation to become a Court, have judges selected by the State Supreme Court who are never subject to public election, and who now have publicly declared that they replace the California Supreme Court in the licensing of attorneys, a denial to Petitioner, a registered voter, of his rights to the equal protection of the law which provides he votes to create new courts, elects judges to the courts, and is entitled to have his vote ordering the State Bar to be a corporation counted and not diluted, abrogated, and destroyed by this corporation now claiming it is the California Supreme Court?

CONCLUSION

It is convenient to create private courts so that cases are disposed of quickly. With a private party running and owning its own court and judges, this eliminates the need for decision-making. The decisions are made before a trial. But the Constitution requires that the licensing of attorneys be done by a real court. Presumably it also requires a real judge.

This Petition for a Writ of Certiorari should be granted to

address the reality that no court is licensing California attorneys. By published decision, two lawyers and a lay person employed by a prosecuting party which is privately financed and which awarded its employer $7,951.00 from this petitioner to pay its salaries and benefits is now the California Supreme Court.

RESPECTFULLY SUBMITTED,

Dated: May , 1997

PETER A. ACUNA
Petitioner Attorney *Pro Se*

Verification

I have read the foregoing Petition for Writ of Certiorari to the California Supreme Court and state it is made on my own personal knowledge, information, and belief, and this verification is executed this ___ day of May, 1997 at San Marino, California.

RESPECTFULLY SUBMITTED,

_____

PETER A. ACUNA
Petitioner Attorney ***Pro Se***

Appendix

In re Peter Adrian Acuna on Discipline

S055788

SUPREME COURT OF CALIFORNIA

February 26, 1997, Decided

OPINION: Petition for writ of review DENIED. It is hereby ordered that Peter Adrian Acuna be disbarred from the practice of law and that his name be stricken from the roll of attorneys. He is also ordered to comply with rule 955, California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the date this order is effective. * Costs are awarded to the State Bar. (See Business & Professions Code, @ 6126, subd. (c).)

Table of Contents to Appendix

A- Order of California Supreme Court, February 26, 1997

B- Decision of the Review Department of the State Bar Court

C- State Statutes

D- Certificate of Costs

CERTIFIED FOR PUBLICATION

FILED
JUNE 20 1996

STATE BAR COURT
LOS ANGELES

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of	)	92-0-12405
	)	92-0-19266
PETER ADRIAN ACUNA	)	92-0-19269
	)	[Consolidated]
	)	
A Member of the State Bar	)	OPINION ON
	)	REVIEW
	)	

Respondent, Peter Acuna, has asked us to review two separate disciplinary proceedings. In the former, the hearing judge recommended a three-year stayed suspension and three-year probation, conditioned on an eighteen-month actual suspension. In the later, the same hearing judge recommended disbarment, regardless of the outcome on review of the former proceeding. We consolidated the proceedings for all purposes on review.

Much of respondent's attack consists of constitutional objections to the State Bar Court and procedural arguments

concerning alleged errors in rulings by the hearing judge. Respondent also challenges specific findings of fact and conclusions of law.

The State Bar's Office of the Chief Trial Counsel (State Bar) opposes respondent's arguments and contends that the hearing judge acted properly, In the former proceeding, the State Bar proposes greater discipline. In the latter proceeding, it recommends adoption of the disbarment recommendation.

Upon independent review, we find that respondent's constitutional and procedural claims lack merit. We also find that the records support most of the hearing judge's findings fo fact and conclusions of law. In our view, the main issue on review is the appropriate degree of discipline to recommend to the Supreme Court in the consolidated proceeding.

The record shows misconduct in seven matters between 1991 and 1992. In four matters, he wilfully misappropriated trust funds totaling over $9,000 and committed other trust account offenses. In two matters, he engaged in acts of moral turpitude by practicing law and holding himself out as entitled to practice

law when he knew he was suspended. In one matter, he represented conflicting interests; and in another matter, he failed to comply with the rules of conduct governing an advance to a client on a future settlement of a personal injury case. In a misappropriation matter, he deliberately misinformed a client about the receipt of a settlement check. In another misappropriation matter, he ignored a client's reasonable inquiries, failed to return her documents upon her request, and failed to reimburse her for a bank charge after he gave her a dishonored reimbursement check. The record reflects minimal mitigation and considerable aggravation, including prior discipline. Thus, we conclude that disbarment is necessary to protect the public, courts, and legal profession; to maintain high professional standards; and to maintain public confidence in the legal profession.

I. PROCEDURAL HISTORY

Respondent was admitted to practice law in California in November 1979.

In early November 1991, respondent stipulated in a prior

proceeding (Acuna I) that he had engaged in acts of moral turpitude, dishonesty, or corruption in violation of Business and Professions Code section 6106[1] by mishandling client trust funds between June 1987 and February 1988. Effective May 14, 1992, respondent was disciplined by a one-year stayed suspension and four-year probation, conditioned on actual suspension for six months.

In the present matters, the State Bar filed the notice to show cause in case 92-O-12405 in September 1993 and the notice to show cause in case 92-O-19266 in January 1994. In February 1994, these cases were consolidated into one proceeding (Acuna II). In a decision filed in February 1995, the hearing judge recommended a three-year stayed suspension and three-year probation, conditioned on actual suspension for eighteen months. Respondent requested review of the Acuna II decision.

The State Bar filed an initial notice to show cause in case 92-O-19269 in March 1994 and an amended notice in April 1995.

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[1] All further references to sections denotes provisions of the Business and Professions Code.

This proceeding (Acuna III) was assigned to the same judge who heard Acuna II. Respondent sought review of the Acuna III decision.

On our own initiative, we ordered the consolidation of Acuna II and Acuna III. (see Rules Proc. of State Bar, title II, State Bar Court Proceedings, rule 108(a).

II. Discussion

A. Respondent's Constitutional and Procedural Claims

Respondent puts forth an array of constitutional and procedural objections. Pursuant to our obligation of independent review (id., rule 305(as); In re Morse (1995) 11 Cal. 4th 184, 207), we have examined these objections and find them meritless.

It is unnecessary to discuss every constitutional and procedural claim made in the hundreds of pages of respondent's review briefs and attached exhibits. It is appropriate, however, to address respondent's main claims: (1) that the State Bar Court is an unconstitutional body lacking jurisdiction and independence; (2) that the provisions of the ethical statutes and rules which he was found by the hearing judge to have violated are

unconstitutionally vague; (3) that the hearing judge was biased against him: (4) that the State Bar prosecuted him in bad faith; (5) that he is entitled to a new trial in Acuna II because of inadequate notices to show cause and ineffective assistance from his counsel; and (6) that several orders by the hearing judge and the application of the Civil Discovery Act in Acuna III denied him due process.

In California, as in all the states, the regulation of the practice of law is a judicial function. (Hustedt v. Worker's Comp. Appeals Bd. (1981) 30 Cal. 3d. 329, 336-337, citing Martyn, Lawyer Competence and Lawyer Discipline: Beyond the Bar? (1981) 69 Geo.L.J. 705, 707, fn.4; see also Middlesex Ethics Committee v. Garden State Bar Assn. (1982) 457 U.S. 423, 432-434; Santa Clara County Counsel Attys. Assn. v. Woodside (1994) 7 Cal. 4th 525, 542-543). The California Supreme Court has original, inherent, and plenary jurisdiction to regulate attorneys in California. (In re Hallinan (1954) 43 Cal. 2d. 243, 253-254; Preston v. State Bar (1946) 28 Cal. 2d. 643, 253-254; {Preston v. State Bar (1946) 28 Cal.2d. 643, 650). The State

Bar provides assistance in the area of attorney regulation; it serves as an "administrative assistant or adjunct of [the Supreme Court], which nonetheless retains its inherent judicial authority...." (Lebbos v. State Bar (1991)53 Cal. 3d. 37, 47, quoting Saleeby v. State Bar (1985) 39 Cal. 3d. 547, 557.) Although Lebbos v. State Bar, supra, and Saleeby v. State Bar, supra, involved the pre-1989 volunteer State Bar Court, the analysis provided by these cases applies even more strongly to the current State Bar Court. (See s. 6086.5 [The State Bar Court acts in the Supreme Court's "place and stead in the determination of disciplinary and other specified proceedings.].) Thus, contrary to respondent's suggestions, the State Bar Court possesses the jurisdiction to adjudicate attorney disciplinary proceedings as an arm of the Supreme Court.

Respondent claims that the "State Bar Court is an entity created, owned, and run by the prosecuting party"; that the prosecuting party selects State Bar court judges to be its employees, assigns them cases, and pays their salaries; and that judge who found respondents innocent "would lose their jobs, not

be reappointed, and not [be] assigned cases." These claims are frivolous. The current State Bar Court is modeled after courts of record. State Bar Court judges are appointed for specified terms by the Supreme Court and are subject to discipline by the Supreme Court upon the same grounds as judges of courts of record. (S. 6079.1 subd. (A).) The prosecution does not assign cases to State Bar Court judges, nor do their salaries depending upon finding attorneys culpable of misconduct. Although the Board of Governors of the State Bar is responsible for paying the salaries of State Bar Court judges, these salaries are set by law to equal those of judges of courts of record (id., subd.(d) and comes from annual membership fees. [2] Thus, respondent has provided no evidence that the State Bar Court is improperly dependent on, or controlled by, the prosecution.

Respondent criticizes as unconstitutionally vague the

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The mere fact that the State Bar can collects costs incurred in disciplinary proceedings (s. 6086.10) does not establish that State Bar Court judges have an impermissible financial interest in finding attorneys culpable of misconduct. Further, as one recent opinion of the United States Court of Appeals noted, costs collected by the State Bar make up less than one percent of the bar's total revenue. (Hirsh v. Justices of Supreme Court of California (9th Cir. 1995) 67 F.3d. 708, 714.

provisions of various statutes and rules which he is charged with violating. He focuses on section 6106, under which acts of moral turpitude, dishonesty, or corruption constitute a cause for disbarment or suspension. The Supreme Court exercises independent review, has routinely imposed discipline based on violations of the provisions criticized by respondent and has not invalidated these provisions. Further, "'one to whose conduct a statute clearly applies may not successfully challenge it for vagueness.'" (In re Kelley (1990) 52 Cal.3d. 487, 497, citing Cranston v. City of Richmond (1985) 40 Cal. 3d. 755, 764, quoting Parker v. Levy (1974) 417 U.S. 733, 756). Regardless of how the criticized provisions may be read in some other context, they do not present ambiguity in the current proceeding. (Cf. In re Morse, supra, 11 Cal. 4th at p. 200). No reasonable person can fairly read section 6106 as inapplicable to respondent's deliberately misinforming a client about the receipt of a settlement check (cf. Stephens v. State Bar (1942) 19 Cal.2d. 580, 583), his misappropriating funds from four clients (cf. Morales v. State Bar (1988) 44 Cal. 3d. 1037, 1045), and his

practicing law when he knew he was suspended (cf. Gold v. State Bar (1989) 49 Cal. 3d. 908, 914 [moral turpitude involved in intentional deception]; Simmons v. State Bar (1970) 2 Cal. 3d. 719, 729 [moral turpitude involved in grossly negligent discharge of duties].)

Respondent contends that the hearing judge was biased against him and that the State Bar prosecuted him in bad faith. Because he identifies no evidence supporting these contentions, we reject them as speculative and conclusory. Further, as discussed post, the record reflects painstaking efforts by the hearing judge to provide respondent with a fair hearing.

We disagree with respondent's argument that a new trial necessary because the notices to show cause in Acuna II did not pair facts with each alleged violation. The deputy trial counsel acknowledges that these notices followed the State Bar's historic pleading practice of reciting factual allegations separately from a catch-all charging paragraph without explaining the basis of each alleged violation. The Supreme Court has repeatedly criticized this practice. (Baker v. State Bar (1989) 49 Cal.3d. 804, 816;

Guzzetta v. State Bar (1987) 43 Cal. 3d. 962, 968.) A defective notice, however, entitles an attorney to relief only if the attorney shows specific prejudice resulted from the defect. (Morales v. State Bar, supra, 44 Cal. 3d. At p. 1047; Stuart v. State Bar (1985) 40 Cal. 3d. 838, 845.) Respondent made no such showing. Indeed, the State Bar's pretrial statement clarified the basis of the charges against respondent; and respondent identified no evidence establishing that the suffered prejudice from lack of notice about the charges against him. (Cf. In the Matter of Varakin (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179, 186.)

We also disagree with respondent's suggestion that alleged ineffective assistance of his counsel necessitates a new trial. A disciplinary proceeding is "administrative in nature, not governed by the rules of criminal procedure." (Walker v. State Bar (1989) 49 Cal. 3d. 1107, 1115, citing Emslie v. State Bar (1974) 11 Cal. 3d. 210, 225-226.) Although an attorney in a disciplinary hearing must have a fair hearing (Rosenthal v. State Bar (1987) 43 Cal. 3d. 612, 634), the attorney has no

constitutional right to counsel or effective assistance from counsel. (Walker v. State Bar, supra, 49 Cal. 3d. At pp. 1115-1116; see also s. 6085, subd. (C).) Any mistakes of respondent's counsel thus cannot warrant retrial. Nor does the record establish that respondent received an unfair hearing.

Respondent claims that the he failed to receive due process because of various orders in Acuna II. The record not only fails to support this claim, but also shows affirmatively the hearing judge's many efforts to afford respondent a fair hearing.

In Acuna II, respondent's counsel did not file a required pre-trial statement and did not appear timely at the properly noticed hearing. The hearing judge waited 20 minutes for respondent and his counsel before she ordered the entry of respondent's default. After the State Bar's opening statement, but before the introduction of any evidence, respondent's counsel arrived. Respondent had been subpoenaed to appear, but did not do so because of a family emergency. In order to afford respondent as fair a hearing as possible, the hearing judge allowed respondent's counsel to participate despite the entry of the

default. Respondent's counsel was permitted to object to testimony by the State Bar's witnesses, to cross-examine the witnesses, to object to the introduction of exhibits, and to tape-record the hearing. Respondent's absence prevented the State Bar from obtaining his testimony.

Subsequently, the hearing judge ordered the setting aside of respondent's default in Acuna II. The order provided that at a new hearing respondent's testimony would be taken and the State Bar's witnesses could be further cross-examined.

Later, the hearing judge ordered respondent's counsel to inform the deputy trial counsel on which of seven alternative dates respondent's counsel and respondent would be available for the new hearing. Respondent's counsel did not comply with this order.

The hearing judge then set the new hearing for one of the alternative dates. The day before the scheduled hearing, respondent's counsel filed a motion for a continuance, based mainly on the need to appear in another State Bar Court matter on the same day. Observing that respondent's counsel had had

almost a month's notice of the new hearing date, the hearing judge denied this motion. Yet she also delayed the time of the new hearing accommodate respondent's counsel and made arrangements with the other State Bar Court judge before whom respondent's counsel was scheduled to appear in order to ensure the availability of respondent's counsel for the new hearing.

Neither respondent nor respondent's counsel appeared at the new hearing in Acuna II. Pursuant to subpoenas, all the State Bar's witnesses appeared. The hearing judge issued an order finding that respondent had waived his right to cross-examine the witnesses and to testify on his own behalf. The deputy trial counsel then completed the presentation of the State Bar's case, and Acuna II was submitted for decision.

In a review brief, respondent alleges for the first time that he was unavailable for the new hearing in Acuna II because he was appearing in a murder trial. Yet neither respondent nor his counsel advised the hearing judge of such alleged unavailability. Further, respondent made no motion to reopen the hearing, although he had more than 10 weeks to do so between the

submission of the proceeding and the filing of the decision in Acuna II. Nor did respondent seek reconsideration of the decision. Thus, we conclude that the hearing judge's orders in Acuna II did not deny respondent due process.

In his review brief in Acuna III, respondent claims that the application of the Civil Discovery Act to "quasi-criminal attorney disciplinary proceedings" and the issuance of an order barring the testimony of a proposed witness denied him due process. We disagree.

In Emslie v. State Bar, supra, 11 Cal. 3d. 210, the Supreme Court explained: "State Bar disciplinary proceedings are administrative but of a nature of their own. [Citations.] It has been repeatedly held that they are not governed by the rules of procedure governing civil or criminal litigation [citations] although such rules have been invoked... when necessary to insure administrative due process. [Citation] (Id., at pp.225-226.) Commenting on the "panoply of legal protection" around the right to practice law, the Supreme Court observed that the Rules of Procedure of the State Bar supply "a wide array of

procedural safeguards" and that pursuant to these rules, the Civil Discovery Act, as adopted and limited by the Rules of Procedure of the State Bar, constitutes "the rules of discovery in State Bar disciplinary proceedings." (Id., at p. 226)

Like the procedural rules at the time of Emslie v. State Bar, supra, 11 Cal. 3d. 210, the rules ar the time of the hearing in Acuna III and the current rules provide that the Civil Discovery Act applies with limitations to attorney disciplinary proceedings. (Former Trans. Rules Proc. of State Bar, rule 315; Rules Proc. of State Bar, title II, State Bar Court Proceedings (eff. Jan 1, 1995), rule 180(a).) Under Emslie v. State Bar, supra, such application is constitutional. (See also Brotsky v. State Bar (1962) 57 Cal. 2d. 287, 298-302.)

Respondent claims that an order barring a proposed witness from testifying in Acuna III denied him due process. The record does not support this claim.

Respondent did not reply to the State Bar's initial discovery requests in Acuna III. Nor did respondent comply with the hearing judge's subsequent order that he respond to the State

Bar's interrogatories and demand for inspection of documents. The State Bar then filed a sanction motion to prevent respondent from introducing evidence about the issues raised by the interrogatories and demand for inspection. Because respondent had discharged his counsel, the hearing judge extended the time for him to reply to the State Bar's motion. Nevertheless, respondent failed to reply until after the extended deadline. Also, although he filed a response to the State Bar's production request and request for admissions, as well as a list of four proposed witnesses, he did not answer the State Bar's interrogatories. Based upon information from respondent and upon interviews with three of respondent's four proposed witnesses, the deputy trial counsel withdrew the State Bar's objection to testimony by these three witnesses. Because the deputy trial counsel had not had an opportunity to interview the fourth witness, the wife of one of the three other witnesses, and because her proposed testimony appeared repetitive of her husband's proposed testimony, the State Bar sought only to preclude the testimony of the fourth witness. The hearing judge issued a sanctions order

granting the State Bar's revised motion. This order excluded only the testimony of the fourth witness or of any other unidentified witness in the culpability phase of the proceeding. We hold that this sanctions order did not deny respondent due process.

As discussed ante, to prevail on a procedural objection in a disciplinary hearing, an att must prove that the procedural error specifically prejudiced him. Respondent offered no such proof. Although his review brief describes the fourth witness as "crucial," the transcript of the hearing suggests that he wanted her testimony only to establish a point which other evidence had made and which was irrelevant to his culpability or discipline.

B. Cases 92-0-12405 and 92-0-19266

Acuna II consists of case 92-0-12405, concerning respondent's representation of Rueveen Faye Watkins, and case 92-0-19266, concerning his representation of Larry Whitman. Although respondent asserts his innocence, we agree with the hearing judge that he is culpable of all the charges against him in Acuna II.

1. **Watkins Matter**

In October 1989, Watkins retained respondent to represent her in a personal injury matter. She signed an agreement whereby respondent was to receive a fee of 33 1\3 percent of any settlement reached before the filing of a suit, 40 percent of any settlement made after the filing of a suit, and 40 percent of any recovery obtained by arbitration or trial.

In November 1991, Watkins signed settlement papers, and respondent informed her that she would receive her share of the settlement within 30 days. On November 21, 1991, respondent negotiated a $20,000 check made payable to Watkins and himself and deposited $15,000 of the settlement funds in his client trust account. R allocated $8,000 of the settlement for his fee and $6,453.78 for Watkins's medical expenses and other costs. Thus, Watkins's net share of the settlement amounted to $5,546.22.

Between December 1991 and February 1992, the balance in respondent's client trust account often dropped below $5,546.22. On December 9, 1991, the balance fee to $337.32;

and on February 13, 1992, the account showed a negative balance of $53.29.

Because Watkins did not receive her share of the settlement within 30 days after signing the settlement documents, she began telephoning respondent 's office to ask about the settlement funds. She repeatedly spoke with respondent's secretary and on one occasion spoke with respondent. They told her that the settlement check had not arrived.

In February and March 1992, respondent sent Watkins checks for $2,000, $600, and $500 drawn on his client trust account. He characterized these payments as advances on her settlement.

In April, 1992, respondent sent Watkins a check for $2,500, the remainder of her share of the settlement, as well as a document showing costs and disbursements in her matter. When Watkins objected to the 40 percent contingency fee and asked about it, respondent's secretary told her that the fee was 40 percent rather than 33 1\3 percent because the matter had gone to trial. Watkins, however, neither had been informed of nor had

of a trial in the Watkins matter, although the record does establish that respondent settled her matter after filing a suit and was entitled to a 40 percent fee.

Respondent committed all the charged ethical violations in the Watkins matter. By telling Watkins that her settlement check has not arrived after cashing the check, respondent willfully violated section 6106, which prohibits acts of moral turpitude and dishonesty, and section 6068, subdivision (m), which requires attorneys to keep clients reasonably informed of significant developments in their matters.[3] By repeatedly allowing the balance in his client trust account to drop below the amount owed to Watkins, respondent wilfully mishandled trust funds in

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3 Insofar as the facts establishing culpability under one section or rule include the facts establishing culpability under another section or rule, we attach no additional weight to such duplication in determining the appropriate discipline. (See Bates v. State Bar (1990) 51 Cal. 3d. 1056, 1060 [little, if any, purpose served by duplicative allegations of misconduct]; In the Matter of Jeffers (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211, 221.)

violation of rule 4-100(A) of the Rules of Professional Conduct,[4] which requires that all funds be received or held for the benefit of clients be deposited in a trust account. Such mishandling reflects at least gross negligence by respondent, who had stipulated in early November 1991 to a charge of moral turpitude for prior misuse of client funds. Thus, the trust account drops which occurred in late 1991 and early 1992 also constituted wilful misappropriation in violation of section 6106's prohibition against moral turpitude. Giovanazzi v. State Bar (1980) 28 Cal. 3d. 465, 474-475.) Because respondent did not start paying Watkins her share of the settlement until February 1992 and did not complete such payment until April 1992, despite her inquiries about receiving her share of the settlement, he also wilfully violated rule 4-100(B)(4), which requires that attorneys promptly pay such funds in their possession as their clients are entitled to receive upon request from the clients.

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[4] Unless otherwise indicated, all further references to rules denote the Rules of Professional Conduct in effect from May 27, 1989 , to September 13, 1992.

2. **Whitman matter**

In November 1991, respondent agreed to represent Whitman in a personal injury case on a contingency fee basis. In response to Whitman's request for an advance on his recovery, respondent issued Whitman a $500 check drawn on a client trust account in March 1992. Respondent did not advice Whitman to consult another attorney before accepting the check, did not discuss the terms of repayment with Whitman, and did not ask Whitman to sign any documents related to the advance.

Respondent is culpable of the ethical violations alleged in connection with his advance of $500 to Whitman. Contrary to respondent's suggestion, this advance constituted an unsecured loan. (In the Matter of Sklar (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 617.) Respondent wilfully violated rule 3-300, which prohibits an attorneys's entering into a business transaction with a client or acquiring a pecuniary interest adverse to a client unless the attorney fully discloses the terms of the transaction or acquisition in writing to the client, advises the client in writing that the client may seek the advice of an

independent lawyer, and gives the client a reasonable opportunity to seek such advice and unless the client consented in writing to the terms of the transaction or acquisition. (Ibid.) Also, respondent willfully violated rule 4-210(A)(2), which prohibits an attorney's lending money to a client without a written promise of repayment. (Ibid.) When respondent loaned the $500 to Whitman from his client trust account, he did one of two things: either he had his own money in the account and therefore is culpable of commingling, or he loaned Whitman money which should have remained in trust for another client and therefore is culpable of misappropriation. In either case, respondent violated rule 4-100(A).

C. Case 92-0-19269

Acuna III addresses respondent's misconduct in the six matters covered by case 92-0-19269. Respondent denies that he committed acts of moral turpitude or dishonesty in violation of section 6106 and that he failed to comply with other ethical

requirements.[5] We conclude that he repeatedly violated section 6106 and engaged in additional wrongdoing, as discussed post.

In the current proceeding, we see no need to discuss the Acuna III charges in which the hearing judge made determinations in respondent's favor. On review, the deputy trial counsel does not dispute these determinations. Pursuant to our obligation of independent review, we have examined the determinations and adopt them as our own.

Nor do we perceive a need to discuss each of respondent's many objections to the hearing judge's findings of fact in Acuna III, although we do address his main contentions. We have reviewed these findings and adopt them as our own unless we indicate otherwise.

1. **Chiqua matter**

On April 15, 1992, the Supreme Court ordered that respondent be actually suspended for six months as a probation

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5 During the hearing and on review, r has acknowledged his mishandling of trust funds and described his misconduct as aberrational. Nevertheless, in the conclusions of his review briefs, he asks for a remand with instructions that none of the charges apply to him.

condition of Acuna I. The suspension period lasted from May 15 to November 14,1992.

Respondent received the Supreme Court's order. On June 1, 1992, respondent acknowledged his suspension in a letter to another client, Lupe Silva. On July 10, 1992, respondent stated in his first quarterly probation report that his suspension began on May 15, 1992.

In early June 1992, Jose Chiqua decided to hire respondent to represent him in a personal injury case. At respondent's office, Chiqua met Marie Hernandez, who said that she was respondent's secretary and that respondent would take Chiqua's case. Chiqua signed retainer and medical lien agreements. On June 26, 1992, respondent signed the lien agreement.

Before respondent's suspension, Hernandez handled the interviewing and processing of new clients for him. She continued to do so while he was suspended. Although respondent was not physically in his office, Hernandez could reach him if she encountered problems. Neither Hernandez nor

respondent informed Chiqua about respondent's suspension.

The amended notice charged respondent in the Chiqua matter with wilful violations of section 6106; section 6125, which prohibits the practice of law by anyone other than an active attorney; and section 6126, which prohibits holding oneself out as entitled to practice law by anyone other than an active attorney. The hearing judge found respondent culpable of all charges.

Relying on his own testimony, respondent claims that he did not know the effective date of his suspension. The hearing judge, however, determined that the testimony was not credible. This determination deserves great weight. (Rules Proc.of State Bar, title II, State Bar Court Proceedings, rule 305(a).) Also, the hearing judge considered two important documents which respondent fails to address: (1) his June 1, 1992, letter, stating that he could not handle another client's matter because of his suspension, and (2) his July 10, 1992, quarterly report, acknowledging the start of his suspension on May 15, 1992. We thus agree with the hearing judge's finding that respondent knew

the effective date of his suspension.

According to respondent, no evidence indicates that he knew about Hernandez's signing up Chiqua as a client for him. Yet, as Hernandez testified, respondent knew that she generally handled personal injury cases for him from intake to settlement. Further, the signed medical lien agreement shows that by late June 1992, respondent was aware that Hernandez had signed up Chiqua as his client when he was suspended.

Respondent argues that he engaged in no "personal acts" of misconduct. The record, however, establishes an important "personal act"; either deliberate permission for Hernandez to continue interviewing and processing clients during his suspension or grossly negligent failure to ensure that Hernandez stopped such interviewing and processing.

Subdivision (a) of section 6068, which imposes upon an attorney the duty to support state laws, provides the necessary basis for finding a violation of section 6125 or 6126. (In the matter of Trousil (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229, 237.) Because the amended notice failed to charge

respondent with violating subdivision (a) of section 6068, he cannot be found culpable of violating section 6125 or 6126.

Yet respondent is culpable of wilfully violating section 6106. Through Hernandez, he permitted himself unlawfully to be held out as entitled to practice law. Because such permission either was intentional or resulted from gross negligence, he committed an act of moral turpitude. [Cf. Sanchez v. State Bar (1976) 18 Cal. 3d. 280, 283-285 [moral turpitude where attorney was grossly negligent in allowing legal documents to be signed by employees who were not authorized to practice law]; Vaughn v. State Bar (1972) 6 Cal. 3d. 847, 857-858 [moral turpitude where attorney was grossly negligent in failing to supervise his associate attorney and support staff].)

2. Leon-Reddersen matter

Jennifer Leon and Edward Reddersen were involved in a car accident in April 1992. Leon was a passenger and Reddersen, the driver. Leon hired respondent to represent her in a personal injury claim against Reddersen, who retained respondent for defense in a criminal drunk driving case arising out

of the accident. Respondent did not inform Leon or Reddersen about the conflict of interest, and neither client consented in writing to respondent's representation despite the conflict.

On May 21 and June 9, 1992, respondent appeared in court on Reddersen's behalf. He also filed a document with the court on June 9, 1992, in connection with Reddersen's plea of no contest to the criminal charges.

By appearing twice in court and filing the document for Reddersen when he knew that he had been suspended as of May 15, 1992, respondent committed acts of moral turpitude in wilful violation of section 6106.[6] (In re Cadwell (1975) 15 Cal. 3d. 762, 771-772.) Further, he wilfully violated the prohibition of rule 3-310(B) against representing clients with potentially conflicting interests, except with their informed written consent. (Cf. In the Matter of Sklar, supra, 2 Cal. State Bar Ct. Rptr. At pp. 614-616 [The representation of both the driver and the

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[6] The hearing judge determined that respondent also violated section 6125 and 6126. Again, the amended notice failed to charge a violation of subdivision (a) of section 6068. As discussed ante, respondent cannot be culpable of violating section 6125 or 6126 without such a charge.

passenger in an automobile accident presented a potential conflict, subject to the prohibition to the predecessor of rule 3-310(B).}.)

3. Silva matter

Lupe Silva hired respondent to represent her in a personal injury case. In early 1992, she met respondent to discuss a possible settlement. On April 23, 1992, an insurance company issued a $6,000 settlement check payable to respondent and Silva.

Respondent did not notify Silva about the receipt of this check.[7] Nor did Silva endorse the check or authorize respondent to endorse it on her behalf.

The check, endorsed with Silva's name, was deposited into respondent's client trust account on May 4, 1992. On June 1, 1992, respondent wrote Silva a letter informing her of his actual suspension in Acuna I. On the same day, the balance in his trust account dropped to $979.85.

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7 Respondent claims that one June 1, 1992, he sent Silva a letter notifying her of the receipt of her funds. This letter, which was admitted as an exhibit, contains no such notification.

Between early 1992 and September 1992, Silva often telephoned respondent's office to find out about her case. Respondent did not reply.

In August or September 1992, Silva met respondent to discuss the settlement. She signed a release of all claims, and respondent told her that she would receive about one-third of the settlement.

In early September 1992, Silva received a breakdown for the distribution of the settlement funds, although she did not know that respondent had completed the settlement. Near the end of the month, she received a check for $2,007 as her share of the settlement.

When Silva initially tried to negotiate the check, it was returned for insufficient funds.[8] Silva contacted respondent, who told her that he would reimburse her for the $15 bounced check fee and that he would send her file to her. He did neither.

Because respondent did not reply to Silva's repeated

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[8] Apparently, Silva was able to negotiate the check later.

inquiries about her case between early 1992 and September 1992, he willfully violated rule 3-500, which requires that an attorney keep a client reasonably informed about significant developments related to representation of the client and promptly comply with reasonable requests for information. By allowing the balance in his client trust account to drop below the amount owed to Silva on June 1, 1992, respondent willfully mishandled trust funds in violation of rule 4-100(A). This mishandling of trust funds reflects at least gross negligence, given the following facts: (1) his stipulation of November 1991 to misappropriation of client funds in Acuna I; (2) his awareness of his actual suspension for such misappropriation; and 3) the letter which he wrote to Silva about his actual suspension on the very day of the drop in his trust account. Accordingly, respondent's mishandling of trust funds was also in violation of section 6106's prohibition against acts of moral turpitude. By failing to return Silva's file, respondent wilfully violated rule 3-700 (D)(1), which requires that an attorney promptly release all client papers and property upon

termination of employment and request from the client.[9]

4. **Smith matter**

On May 26, 1992, the State Bar sent respondent a letter asserting that his payment of the disciplinary cots in Acuna I was a condition of reinstatement to the practice of law and that he would remain on actual suspension until he paid the costs. On December 3, 1992, the State Bar sent him another letter again asserting that he would remain on actual suspension until he paid the costs. On January 11, 1993, he paid the costs in Acuna I.

On November 24, 1992, and January 5, 1993, respondent appeared in court as counsel for Cynthia Smith. The hearing judge determined that these appearances constituted wilful violations of sections 6106, 6125, and 6126.

We disagree. As respondent argues, his suspension lasted for only six months, the period stated by the Supreme Court's

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[9] Respondent contends that no evidence indicates termination of employment. Yet the exhibits and Silva's testimony show that respondent's representation of Silva was at an end. She had hired him to handle a personal injury case, which he had settled. At her request, he agreed to send her file to her and pay her the $15 bank fee for the dishonored check.

order in Acuna I. The "costs of disciplinary proceeding need not be paid by a disciplinarily suspended [attorney] as a condition of reinstatement.... unless the [attorney] has also been administratively suspended for failure to pay such costs as part of the [attorney's] next annual bill for membership fees." (In the matter of Langfus (Review Dept. 1994) 3 Cal. State Bar Rptr. 161, 167.) No such automatic administrative suspension occurred in the current proceeding, and as we noted ante, respondent's actual suspension terminated on November 14, 1992.

5. Reyes matter

Respondent represented Amador Reyes in a personal injury case. Reyes agreed to settle the case of $7,650. In April 1992, the insurance company issued a $7, 650 settlement check made payable to respondent and Reyes. Respondent did not notify Reyes of his receipt of the check. Reyes neither endorsed the check nor authorized anyone to endorse it on his behalf. On April 15, 1992, the check was deposited into one of respondent's ordinary checking accounts rather than his client trust account.

From April 17, 1992, onwards, the balance in the ordinary checking account fluctuated above and below $2,550, Reyes's share of the settlement. On August 26, 1992, the balance dropped to a negative amount. After retaining another attorney in September 1992, Reyes found out about the completion of the settlement and demanded an explanation from respondent. Later in September 1992, Reyes received $2, 550 from respondent.

Because respondent did not notify Reyes in April 1992 about the arrival of the settlement check, he wilfully violated rule 4-100(B)(1)'s requirement that an attorney promptly notify a client about the receipt of the client's funds. By failing to deposit and maintain Reyes' share of the settlement in a client trust account, respondent wilfully mishandled trust funds in violation of rule 4-100(A). Because respondent was at least grossly negligent in withdrawing these funds, he wilfully misappropriated $2, 550 in violation of section 6106's prohibition against moral turpitude.

6. Rumbo matter

Respondent represented Anacleto Rumbo in a personal

injury case. In July 1992, respondent received a $5,000 settlement check, which he deposited into an ordinary checking account. Rumbo's share of the settlement was $2,000. On August 25, 1992, the balance in the account fell to $1,541.67. In September 1992, respondent paid $2,000 to Rumbo.

By failing to deposit and maintain Rumbo's share of the settlement in a client trust account, respondent wilfully mishandled trust funds in violation of rule 4-100(A). Because he was at least grossly negligent in withdrawing these funds, respondent wilfully misappropriated $458.33 in violation of section 6106's prohibition against moral turpitude.

D. Mitigation

We agree with the hearing judge that respondent proved two mitigating circumstances. He provided free legal seminars to the Chinese community. (See Porter v. State Bar (1990) 52 Cal. 3d. 518, 529; Rose v. State Bar (1989) 49 Cal. 3d. 646, 665-666.) Also, he voluntarily repaid misappropriated funds to his clients before the start of disciplinary proceedings. (See Rules Proc. of State Bar. Title IV, Stds. for Atty. Sanctions for Prof.

Misconduct (standards), std. 1.2(e)(vii); Lawhorn v. State Bar (1987) 43 Cal. 3d. 1357, 1366.)

As found by the hearing judge in Acuna III, respondent failed to provide an extraordinary demonstration under standard 1.2(e)(vi) of good character attested to by a wide range of references who are aware of the full extent of the attorney's misconduct. He offered the testimony of only two attorneys, neither of whom knew the scope of the charges against him. (Cf. In re Aquino (1989) 49 Cal. 3d. 1122, 1130-1131 [Testimony by seven witnesses plus twenty letter affirming the attorney's good character were not entitled to significant weight in mitigation because most of those who testified or wrote were unaware of the details of the attorney's misconduct.].)

In his review briefs, respondent contends for the first time that extreme personal and financial problems between 1987 ands 1992 led to his wrongdoing. We give no mitigating weight to these belated and unsupported contentions.[10] Respondent failed

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[10] An attorney who experiences a period of extreme personal pressures and financial difficulties should be 'especially careful with the handling of...

about the purported problems during the hearings in Acuna III. (See Martin v. State Bar (1991) 52 Cal. 3d. 1055, 1063.) Nevertheless, we note that respondent's two witnesses in the discipline phase of Acuna III briefly alluded to financial difficulties which respondent had experienced and which had culminated in respondent's filing for bankruptcy. Respondent introduced no evidence about the cause of the financial difficulties or his motives for misappropriating client trust funds. Although extreme financial difficulties resulting from circumstances beyond an attorney's control can constitute significant mitigation (Grim v. State Bar (1991) 53 Cal. 3d. 21, 31; In re Naney (1990) 51 Cal. 3d. 186, 196), respondent did not prove that such circumstances caused his difficulties. We thus decline to accord weight in mitigation to his difficulties.

Respondent also claims that this misconduct was aberrational. Yet his repeated acts of serious misconduct from

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clients' funds during this period, not less careful." (Amante v. State Bar (1990) 50 Cal. 3d. 247, 255; citing Barnhouski v. State Bar (1979) 24 Cal. 3d. 153, 166.)

late 1991 through 1992 undercut this claim. (See In the Matter of Lane (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 735, 749; In the Matter of Kueker (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583, 594.)

E. Aggravation

We agree with the hearing judge that the record demonstrates clearly the following aggravating circumstances: (1) a prior record of discipline for mishandling trust funds in Acuna I (std.1.2(b)(I)); (2) multiple acts of wrongdoing (std. 1.2(b)(ii)); (3) harm to the administration of justice as a result of respondent's unauthorized practice of law (std. 1.2(b)(iv)); and (4) indifference toward rectifying the consequences of his misconduct, as shown by his continued failure to return Silva's file and reimburse her for the bounced check fee (std. 1.2(b)(vi)).

F. Discipline

In Acuna II, the hearing judge recommended a three-year stayed suspension and three -year probation, conditioned on actual suspension for eighteen months. In Acuna III, she recommended disbarment, independent of the Acuna II

recommendation. Respondent wants Acuna II and Acuna III remanded with instructions that none of the charges apply to him. In review briefs, the State Bar requested sterner discipline in Acuna II and supported the disbarment recommendation in Acuna III.

We first seek guidance from the standards. (See In re Morse, supra, 11 Cal. 4th at p. 206; Drociak v. State Bar (1991) 52 Cal. 3d. 1085, 1090.) Under standard 1.3, the primary purposes of discipline are to protect the public, courts, and legal profession; to maintain high professional standards by attorneys; and to preserve public confidence in the legal profession.[11] (See In re Morse, supra, 11 Cal. 4th at p. 205.) If an attorney commits several acts of misconduct and if the standards prescribe different sanctions for the different acts, the most severe of these sanctions should be imposed. (Std. 1.6(a).) Of the standards which apply to respondent's misconduct, the ones which the most severe

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[11] In his Acuna III review brief, respondent does not address these purposes. Instead, he states that "rehabilitation is the goal" of discipline. Under standard 1.3, rehabilitation is a permissible purpose of discipline only if it is consistent with the primary purposes.

sanctions are standard 2.2(a), which calls for the disbarment of an attorney who has wilfully misappropriated trust funds unless the amount involved is insignificantly small or the most compelling mitigating circumstances clearly predominate, and standard 2.3, which calls for the disbarment or suspension of an attorney who has engaged in acts of moral turpitude, fraud, or dishonesty, depending upon the circumstances. Given respondent's deliberately misinforming a client about the receipt if a settlement check, misappropriating significant sums, and engaging in the unauthorized practice of law, as well as the limited mitigation and substantial aggravation surrounding his wrongdoing, the standards call for his disbarment.

We should also consider the discipline imposed in similar proceedings. (See Snyder v. State Bar (1990) 49 Cal. 3d. 1302, 1310-1311.) In Grim v. State Bar, supra, 53 Cal. 3d. 21, Grim misappropriated $5,500 from a client and repaid the client only under the pressure of disciplinary proceedings. In mitigation, Grim cooperated with the State Bar and presented considerable evidence of good character. In aggravation, Grim had a prior

private reproval for commingling personal funds with trust funds, took advantage of the client's move to another state, and made dishonest representations to the client's new attorneys about repaying the client. The Supreme Court ordered Grim's disbarment.

Respondent's misconduct surpasses Grim's. Respondent wilfully misinformed a client about the receipt of the settlement check, misappropriated a total of more than $9,000 from four clients, knowingly engaged in the unauthorized practice of law while he was on actual suspension, and violated other ethical requirements. Although respondent's mitigation may be comparable to Grim's, the aggravation surrounding respondent's misconduct is more serious than the aggravation surrounding Grim's wrongdoing. It is particularly disturbing that respondent's prior discipline was a six-month actual suspension for acts of moral turpitude or dishonesty in mishandling client trust funds.

Misappropriation "violates basic notions of honesty and endangers public confidence on the legal profession. (Chang v.

State Bar (1989) 49 Cal.3d. 114, 128...; Kelly v. State Bar (1988) 45 Cal. 3d. 649, 656...) In all but the most exceptional of cases, it requires the imposition of the harshest discipline. (Chang v. State Bar, supra, at p. 128; Gordon v. State Bar (1982_ 31 Cal. 3d. 748, 757...)" (Grim v. State Bar, supra, 53 Cal. 3d. at p. 29)

Respondent committed acts of moral turpitude and dishonesty without compelling mitigation and with substantial aggravation. He also engaged in a wide range of other misconduct. Only disbarment can adequately protect the public, courts, and legal profession; maintain high professions [sic] standards by attorneys; and preserve public confidence in the legal profession.

III. RECOMMENDATION

We recommend that respondent be disbarred from the practice of law in the State of California. We also recommend that he be ordered to comply with the provisions of Rule 955 of the California Rules of Court and perform the acts specified in subdivisions (a) and © of Rule 955 within 30 days and 40 days, respectively, after the effective date of the Supreme Court order

in this proceeding. We further recommend that costs be awarded to the State Bar pursuant to Business and Professions Code Section 6086.10.

STOVITZ, J.

We Concur:

O'Brien, P.J.

Norian, J.

California Business and Professions Code

State Statutes

THE STATE BAR ACT

California Business and Professions Code

Sec. 6079.1 STATE BAR COURT HEARING JUDGES

(a) The Supreme Court shall appoint a presiding judge of the State Bar Court and no fewer than seven hearing judges, and any additional hearing judges as may be authorized by the Legislature, to efficiently decide any and all regulatory matters pending before the Hearing Department of the State Bar Court. . .

(c) The board shall screen and rate all applicants for appointment or reappointment as a State Bar Court judge, and submit its nominations to the Supreme Court, unless otherwise directed by the Supreme Court. . .

(d) For judges appointed pursuant to this section or Section 6086.65, the board shall fix and pay reasonable compensation and expenses and provide adequate supporting staff and facilities.

Sec. 6079.5 CHIEF TRIAL COUNSEL; APPOINTMENT; TERM; QUALIFICATIONS

(a) The board shall appoint a lawyer admitted to practice in California to serve as chief trial counsel. . .

Sec. 6086.5 STATE BAR COURT; ESTABLISHMENT; POWERS; RULES

The board of governors shall establish a State Bar Court, to act in its place and stead in the determination of disciplinary and reinstatement proceedings and proceedings pursuant to subdivisions (b) and (c) of section 6007 to the extent provided by rules adopted by the board of governors pursuant to this chapter. . .

Sec. 6086.10 PAYMENT OF COSTS OF DISCIPLINARY PROCEEDINGS

(a) Any order imposing a public reproval on a member of the State Bar shall include a direction that the member shall pay costs. In any order imposing discipline, or accepting a resignation with a disciplinary matter pending, the Supreme Court shall include a direction that the member shall pay costs.

(b) The costs required to be imposed pursuant to this section include all of the following:

(1) The actual expense incurred by the State bar for the original and copies of any reporter's transcript of the State Bar proceedings, and any fee paid for the services of the reporter.

(2) All expenses paid by the State Bar which would qualify as taxable costs recoverable in civil proceedings.

(3) The charges determined by the State Bar to be "reasonable costs" of investigation, hearing, and review. These amounts shall serve to defray the costs, other than fees for the services of attorneys or experts, of the State bar in the preparation or hearing of disciplinary proceedings, and costs incurred in the administrative processing of the disciplinary proceedings and in the administration of the client security fund.

. . .

(d) In the event an attorney is exonerated of all charges following a formal hearing, he or she is entitled to reimbursement from the State bar in the amount determined by the State bar to be the reasonable expenses, other than fees for attorneys or experts , of preparation for the hearing. (Added by Stats. 1986, ch. 662.)

Sec. 6086.13 IMPOSITION OF MONETARY SANCTION IN DISCIPLINARY MATTER .(a) Any order of the Supreme Court imposing suspension or disbarment of the member of the State Bar, ...may include an order that the member pay a monetary sanction not to exceed five thousand dollars ($5,000) for each violation, subject to a total limit of fifty thousand dollars.

(b) Monetary sanctions collected under subdivision (a) shall be deposited into the Client Security Fund.

....(d) The authority granted under this section is in addition to the provisions of Section 6086.10 and any other authority to impose costs or sanctions....

Sec. 6086.65 STATE BAR COURT REVIEW DEPARTMENT

(a) There is a Review Department of the State Bar Court which consists of the Presiding Judge of the State Bar Court, one Lay Judge, and one Review Department Judge. The judges of the Review Department shall be nominated, appointed, and subject to discipline as provided by subdivision (a) of Section 6079.1, and shall be compensated as provided for the Presiding Judge by subdivision (d) of section 6079.1. However, the Lay Judge, who

shall be a person who has never been admitted to practice law before any court in the United States, and the Review Department judge may be appointed to, and paid as, positions occupying one-half the time and pay of the Presiding Judge. Candidates shall be rated and screened by the board as provided in subdivision © of Section 6079.1.....

FOR STATE BAR COURT

FILED AUGUST 28, 1996

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT
OF THE STATE BAR OF CALIFORNIA
1149 SOUTH HILL STREET 5TH FLOOR
LOS ANGELES, CA. 90015

In the Matter of

PETER A ACUNA

Member of the State Bar

CERTIFICATE OF COSTS CASE NO. 92-0-12405 ET. AL

Imposition of the following costs are recommended pursuant to Business and Professions Code Section 6086.10(b)(1)-(3):

1. Transcript Costs and Court Reporter's Fees.....1..$.....0
2. Taxable Cost Recoverable (see attached Statement(s) of Costs)
   a. Deposition Costs.....2a.$.....0
   b. Service of Process Costs.....2b.$.....0
   c. Witness Costs.....2c.$..458.00
   d. Court-ordered Transcripts.....2d. $.....0
   e. Exhibit Costs..... .2e. $.716.00
   f. Court-Ordered Expert costs.....2f. $.....0

g. Other Taxable Costs.....2g $.348.70

3. Reasonable Costs (see attached Statement(s) of Costs)

a. Office of Investigation Costs.....3a. $ 2,640.00
b. Office of Trial Counsel Costs.....3b. $ 3,460.00
c. Office of State Bar Court Costs..... 3c $ 1,851.00

TOTAL COSTS.....TOTAL $7,951.00

I, Judy Duffield, Clerk of the State Bar Court, do hereby certify that, to the best of my knowledge and belief, the above costs, based on this certificate and the accompanying cost statements are correct as provided by rule 461, Rules of Procedure of the State Bar of California.

Judy Duffield
Clerk of the State Bar Court

Date: August 28, 1996

By: (signed)

ERIK ESTRADA
DEPUTY COURT CLERK

STATEMENT OF COSTS

Office of the State Bar Court of the State Bar of California

In the Matter of PETER A. ACUNA
Case Number(s) 92-O-12405 ET AL

Pursuant to Business and Professions Code section 6086.10, it is requested that Jessie Shiow-Jiuan Ho, a member of the State Bar of California, be ordered to pay the following costs.

Reasonable Costs of the Office of the State Bar Court

1. **Level One Assessment** .... $_____
   [Stipulated disposition reached prior to filing of a Notice to Show Cause]

2. **Level Two Assessment** .... $_____
   [Stipulated disposition reached prior to time of trial]

3. **Level Three Assessment** .... $_____
   [Stipulated disposition reached at time of trial or trial not exceeding one day is conducted]

4. **Level Four Assessment** $ 1,851.00
   [Trial exceeding one day is conducted]

5. **Resignation of Member with Charges Pending** $_____

Judy Duffield
Clerk of the State Bar Court

Date: August 28, 1996

By: (signed)
ERICK E. ESTRADA
Deputy Court Clerk

Certificate of Costs Submitted by the Office of Investigation and the Office of Trial Counsel of the State Bar of California

In the Matter of **Acuna, Peter, 90636**
Case Number(s) **92-0-12405, 92-0-19266**

Pursuant to Business and Professions Code, it is requested that **Peter Acuna,** a member of the State Bar of California be ordered to pay the following costs.

TAXABLE COSTS

1. Deposition Costs .... $_____
2. Exhibit Costs.....$206.00
3. Court-ordered Expert Costs..... _____
4. Service of Process..... _____
5. Court-ordered reporting and Transcripts..... _____
6. Witness Costs.....$153.00
7. Other Reasonable Costs..... _____

Total Taxable Costs .....$ 359.00

REASONABLE COSTS OF INVESTIGATION, HEARING,

1. Pursuant to State Bar Approved Models
   a. Office of Investigation .....$ 880.00
   b. Office of Trials.....$1,143.00
2. Extraordinary Costs
   a. Office of Investigation .....$_____
   b. Office of Trials.....$_____

Total Costs of Investigation, Hearing, and Review....$2,023.00

TOTAL OF ALL COSTS.....$2,382.00

Dated: February 10, 1995 BY: (SIGNED)

Diane Lebow
Administrative Secretary

CERTIFICATE OF COSTS
Submitted by
the Office of The Chief Trial Counsel
The State Bar of California

In the Matter of **Peter Adrian Acuna, 90636**
Case Number(s) 92-0-19269, 92-0-19438,92-0-19440, 92-0-20070

Pursuant to Business and Professions Code, it is requested that **Peter A. Acuna,** a member of the State Bar of California be ordered to pay the following costs.

TAXABLE COSTS

1. Deposition Costs .... $_____
2. Exhibit Costs.....$510.00
3. Court-ordered Expert Costs..... _____
4. Service of Process..... _____
5. Court-ordered reporting and Transcripts..... _____
6. Witness Costs.....$305.00
7. Other Reasonable Costs..... _____

Total Taxable Costs .....$ 815.00

REASONABLE COSTS OF INVESTIGATION, HEARING, REVIEW

1. Pursuant to State Bar Approved Models
   a. Office of Investigation $1,760.00
   b. Office of Trials.....$1,143.00

2. Extraordinary Costs

a. Office of Investigation .....$_____
b. Office of Trials.....$_____

Total Costs of Investigation, Hearing, and Review....$2,903.00

TOTAL OF ALL COSTS.....$3,718.00

Dated: September 21,1995 BY: (SIGNED)

Diane Lebow
Administrative Secretary